IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 22949 of 2006(F)

PETITIONER:

I.C.SHAJIL, S/O.CHANDRAN, IRUDUKAVIL HOUSE, SUKAPURAM, KALADITHARA, EDAPPAL, MALAPPURAM.

BY ADV. SMT.SUMATHY DANDAPANI (SR.)

RESPONDENTS:
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1. THE REGIONAL TRANSPORT AUTHORITY, KOZHIKODE, REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY, REGIONAL TRANSPORT AUTHORITY, KOZHIKODE.

3. THE DISTRICT TRANSPORT OFFICER, KERALA STATE ROAD TRANSPORT CORPORATION, KOZHIKODE.

BY GOVERNMENT PLEADER SRI.M.R.SABU
SRI.K.PRABHAKARAN, SC, KSRTC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON 13/09/2007 DELIVERED THE FOLLOWING:

WPC NO. 22949/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: PHOTOCOPY OF PERMIT NO.C5/33316/05/M DATED 29.11.05 ISSUED BY THE REGIONAL TRANSPORT AUTHORITY, MALAPPURAM TO THE PETITIONER.

EXT.P2: ROUGH SKETCH OF THE ROUTE.

EXT.P3: PHOTOCOPY OF APPLICATION FOR RENEWAL OF THE PERMIT SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT ON 29.11.05.

EXT.P4: PHOTOCOPY OF ORDER NO.G1/2752/06/D DATED 2.5.06 OF THE 2ND RESPONDENT ISSUED TO THE PETITIONER.

EXT.P5: PHOTOCOPY OF NOTIFICATION NO.51/B1/2001/TRAN.DATED 9.5.06 PUBLISHED IN KERALA GAZETTE NO.845.

EXT.P6: PHOTOCOPY OF APPEAL MEMORANDUM, MVAA NO.211/06 PREFERRED BY THE PETITIONER BEFORE STATE TRANSPORT APPELLATE TRIBUNAL, ERNAKULAM ON 7.5.06.

EXT.P7: PHOTOCOPY OF JUDGMENT OF THE STATE TRANSPORT APPELLATE TRIBUNAL, ERNAKULAM, RENDERED ON 8.8.06 IN MVAA NO.211/06.

EXT.P8: TRUE COPY OF PROCEEDINGS DATED 27.1.06 RELATING TO THE PERMIT THRISSUR-KOZHIKODE GRANTING ADDITIONAL TRIP FROM KUTTIPPURAM-KOZHIKODE FOR THE STAGE CARRIAGE KL/8W 1683.

EXT.P9: TRUE COPY OF ORDER DATED 25.10.06 GRANTING VARIATION GIVEN FOR THE STAGE CARRIAG EKL/8V 6233.

EXT.P10: PHOTOCOPY OF NOTIFICATION NO.G.OM.S.209/67/PW DATED 7.10.1967.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 22949 OF 2006
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Dated this the 13th day of September, 2007

J U D G M E N T

Petitioner is a Stage Carriage operator, who had a permit in the route Ponnani-Kozhikode-Guruvayur for the period 2000 to 2005. On its expiry, the petitioner applied for a fresh permit and by Ext.P1, the RTA, Malappuram granted permit for the aforesaid route for the period from 29/11/05 to 28/11/2010, subject to counter signature of sister RTAs at Kozhikode and Trichur. Ext.P1(2) is the consequential proceedings issued by the Secretary, RTA, Malappuram. By Ext.P4 order, the RTA, Kozhikode rejected the counter signature on the ground that a portion of the route lies in the notified scheme Kottayam-Kozhikode and that the route is well served. Appeal filed to the Tribunal was also rejected by Ext.P7 judgment. The Tribunal has stated that there is overlapping in the scheme covered area

for more than 10 kms. It is further stated that as it was not an existing permit, but a fresh permit, the petitioner was not entitled to the benefit of the Clause 4 of Ext.P5 notification, which provided that existing private operators will be permitted to continue in the scheme covered area in question. It is in this background, this writ petition has been filed praying for quashing Exhibits P4 and P7 and to direct the RTA, Kozhikode to consider the question of counter signature and for other consequential reliefs.

2. During the course of hearing, the finding in Exhibits P4 and P7 that there is overlapping for more than 10 kms in the Kottayam-Kozhikode notified route is not disputed. The only contention raised was that since Ext.P5 notification provided that, existing private operators will be permitted to continue, the petitioner is entitled to be granted the permit as he was an existing private operator. This contention is raised on the basis that Ext.P5 notification is dated 9th May 2006, whereas the period of Ext.P1 permit

is from 29/11/05. Though this contention would appear to be attractive at the first blush, I do not find any substance in this. The permit granted was subject to counter signature by sister RTAs at Kozhikode and Trichur. By Ext.P4, the RTA, Kozhikode declined the counter signature in the permit and this decision has been confirmed by the Tribunal in Ext.P7. As a result of this, the petitioner did not have a permit at all, after the initial permit expired early in 2005. Therefore, when the notification came into force on 9th May 2006, petitioner did not have a permit to be an existing operator to claim the benefit that is available in Ext.P5. In my view, petitioner was not an existing operator and therefore the protection clause in Ext.P5 is not available to him.

Writ petition lacks merit and it is dismissed.

ANTONY DOMINIC, JUDGE.

Rp